IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 132 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
PATEL ARVINDBHAI JETHALAL - Opponent(s)

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Appearance :
MR KP RAVAL APP for Appellant(s) : 1,
MR PRAKASH K JANI for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 25/10/2007

ORAL JUDGMENT

1.0 This appeal is directed against the judgment and order dated 30.10.1993 passed by the learned Judicial Magistrate, First Class, Visnagar in Summary Case No. 376 of 1988 whereby, the respondent – accused was acquitted of the charges levelled against him.

2.0 The brief facts of the prosecution case are as under;

2.1 On 05.12.1988 an inspection was carried out at the shop of the respondent – accused by the Officers of the appellant – State. After completing necessary formalities, a sample of 'Ghee' was purchased from the respondent in the presence of '*panchas'* after making necessary payment towards the same. The said sample was then sent to the Analyst for examination.

2.2 On examination, the sample was found to be adulterated. Therefore, a complaint with respect to the aforesaid alleged offence was filed against the respondent and, ultimately, trial was conducted. In order to prove the guilt against the respondent, the prosecution has examined the complainant – Madhabhai Kacharabhai Oza as PW – 1 at Exhibit – 26 and has also relied upon several documentary evidence. At the end of trial, the learned Magistrate acquitted the respondent of the charges levelled against him.

3.0 Heard learned counsel for the respective parties and perused the entire documents on record. The principles which would govern and regulate the hearing of appeal by this Court against an order of acquittal passed by the trial Court have been very succinctly explained by the Apex Court in a catena of decisions. This Court has the power to re-consider the whole issue involved in the appeal, re-appraise the evidence and come to its own conclusion and findings in place of the findings recorded by

the trial Court, if the said findings are against the weight of the evidence on record or, in other words, perverse.

4.0 In a recent decision of the Apex Court in the case of ***State of Goa v. Sanjay Thakran & anr. reported in (2007) 3 S.C.C. 755***, the Court has reiterated the powers of this Court in such cases. In Para-16 of the said decision, the Court has observed as under ;

> "16. From the aforesaid decisions, it is apparent that while exercising the powers in appeal against the order of acquittal the Court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower Court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the Court of appeal would not take the view which would upset the judgment delivered by the Court below. However, the appellate Court has a power to review the evidence if it is of the view that the conclusion arrived at by the Court below is perverse and the Court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the appellate Court, in such circumstances, to re-appreciate the evidence to arrive to a just decision on the basis of material placed on record to find out whether any of the accused is connected with the commission of the crime he is charged with".
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> [*Emphasis supplied*]

5.0 Similar principle has been reiterated by the Hon'ble Apex Court in two recent decisions in the cases of ***State of Uttar***

Pradesh v. Ram Veer Singh & ors. reported in ***2007 A.I.R. S.C.W. 5553*** and in ***Girja Prasad (Dead) by L.Rs. v. State of M.P.*** reported in ***2007 A.I.R. S.C.W. 5589***. Thus, the powers which this Court may exercise against an order of acquittal are well settled.

6.0 In the impugned order, the trial Court has recorded a finding of fact that the sample of 'Ghee' so collected was not collected after following due procedure. The said finding has been arrived at on the basis that neither in the '*panchnama'* nor in the complaint, any averment to the effect that the sample in question was collected after shaking it well has been made. On the contrary, the complainant has admitted in his cross-examination that he has not averred in the complaint that he had churned the 'Ghee' before taking the sample.

7.0 Considering the facts and circumstances of the case, it would be relevant to refer to a decision of this Court in the case of ***Laxmichand Bhailal Thakker v. State of Gujarat*** reported in ***1995 (2) G.L.R. 1528*** wherein it has been held that the provisions of Sections 7 & 16 of the Prevention of Food Adulteration Act, 1954 and Rule 4 of the Prevention of Food Adulteration Rules, 1955 are mandatory and that the seal on the sample must be compared with the specimen seal and the failure to do so vitiates the trial. On the facts of that case, the Court held that even an article like solid Ghee must be stirred well before taking a sample and for that purpose it must be heated.

8.0 Apart from the above, the '*panch'* witnesses have not been examined. Thus, there are serious lapses in the case of the prosecution. Keeping in mind the principle laid down by this Court in the case of *Laxmichand Bhailal Thakker* (supra), I am of the opinion that the trial Court was completely justified in acquitting the respondent of the charges levelled against him. In my view, the findings recorded by the trial Court are absolutely just and proper and in recording the said findings, no illegality or infirmity has been committed by it. I am in complete agreement with the findings, ultimate conclusion and the resultant order of acquittal recorded by the trial Court and, hence, find no reasons to interfere with the same.

9.0 In the result, the appeal is dismissed. Office is directed to send the Records & Proceedings of the case, if lying with this Court, to the trial Court concerned forthwith.

[K. S. Jhaveri, J.]

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